IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 240/2003

1) Special Land Acquisition Officer (N),
T.I.P. Complex, P.O. Tivim Industrial Estate,
Karaswada, Mapusa, Bardez, Goa.

2) Executive Engineer,
Works Division VIII,
Irrigation Department,
Now under G.T.I.D.C.,
W.D. VIII, T.I.P. Complex,
P.O. Tivim, Industrial Estate,
Karaswada, Mapusa, Bardez, Goa. ..... Appellants.

V/s.

Dr. Ramesh Mahadev Sinai Mulgaonkar,
R/o. Assonora, Bardez, Goa. ..... Respondent.

Mr. S.R. Rivonkar, Government Advocate for the appellants.

Mr. Sudesh Usgaonkar, Advocate for the respondent.

CORAM : A.P. LAVANDE &
N.A. BRITTO, JJ.

Date of reserving the Judgment :
2nd February, 2005.

Date of pronouncing the Judgment:
28th February, 2005.

**J U D G M E N T :** (Per LAVANDE, J.)

By this appeal, the appellants have challenged the Judgment and Award dated 13.5.2003, passed by the Addl. District Judge, Mapusa in Land Acquisition Case No.138/98 partly allowing the reference.

2. An area admeasuring 14,200 sq. metres bearing Survey No.97/2 situated on the boarder of Tivim Village of Bardez Taluka was acquired by the Government for construction of Left Bank Main Canal of Tillari Irrigation Project. Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter, referred to as `the Act') was published on 13.10.1995. The Land Acquisition Officer made the Award on 30.9.1997, fixing the compensation at the rate of Rs.20/- per sq. metre in respect of the land. The respondents herein sought reference under Section 18 of the Act, claiming compensation at the rate of Rs.200/- per sq metre. The reference Court decided the reference partly allowing it and enhancing the market rate in respect of the acquired land from Rs.20/- to Rs.110/- per sq. metre. Being aggrieved, the appellants have preferred this appeal.

3. We have heard Mr. Rivonkar, learned Government Advocate for the appellants and Mr. Usgaonkar, learned Advocate for the respondent. The only point which arises for determination in the present appeal is, whether the reference Court was justified in fixing the market rate of the acquired land at the rate of Rs.110/- per sq. metre and, if not, what is

the market rate in respect of the acquired land.

4. The respondent herein examined three witnesses, namely Vassudeo Kamat, the attorney of the respondent AW.1,, Anand Kulkarni, Approved Valuer AW.2, and Pandurang Patil AW.3. The appellants herein examined two witnesses, namely Shri V.S. Honwen RW.1, Asst. Engineer in the Irrigation Department and Shri Shrikant Dattatraya Patil RW.2 also an Assistant Engineer in the Irrigation Department. The respondent relied upon two sale deeds, the first one being the Sale Deed dated 27.1.1992 in respect of a plot of land admeasuring 5350 sq. metres at a distance of about 2 kms. from the acquired land at the rate of Rs.75/- per sq. metre. The said deed mentions that the consideration has been paid in respect of the plot as well as the residential house existing therein. Another sale deed relied upon by the respondent is Sale Deed dated 5.12.1995, which forms part of the plot which was sold by Sale Deed dated 27.1.1992. The consideration referred to in the sale deed works out to Rs.337/- per sq. metre. The reference Court relied upon the sale deed dated 5.12.1995 and after making some deductions arrived at the market rate of Rs.110/- per sq. metre in respect of the acquired land.

5. Mr. Rivonkar, learned Counsel for the appellants has submitted that the market rate fixed by the reference Court is contrary to the

settled principles governing the fixation of market rate, as laid down by the Apex Court. The learned Counsel has further submitted that no reliance could be placed on the sale deed dated 27.1.1992 since the sale deed was not only in respect of the plot, but was also a residential house existing therein and, therefore, it is not possible to find out what was the value of the land sold by the sale deed. In so far as sale deed dated 5.12.1995 is concerned, it is submitted that it is a small plot and, as such, cannot be compared with the acquired land which is situated in the interior, which had no direct motorable or other access. It is further submitted that the claimant has not established similarity between the acquired land and the land under the sale deed and on this count, no reliance could be placed on the said sale deed. The learned Counsel submitted that since the sale deed is post- Section 4 Notification, the same cannot be relied upon. In support of his submissions, he has relied upon the following Judgments :

***(1) Chimanlal Hargovinddas vs. Special Land Acquisition Officer Poona and anr.*** (AIR 1988 SC 1652);

***(2) Union of India vs. V.M. Salgaonkar and Brother Ltd.*** (1989(1) Goa L.T. 251);

***(3) M/s. Printers House Pvt. Ltd., v. Mst. Saiyadan (Deceased) by L.Rs., and ors. (AIR 1994 SC 1160);***

***(4) The Special Land Acquisition Officer (7), Bombay and Bombay Sabarban District Municipal Corporation v. Vishanji Virji Mepani***

***and anr.*** (AIR 1996 Bombay 366);

***(5) Karan Singh and ors. vs. Union of India*** ( (1997) 8 SCC 186)

(6) ***P. Rajan & Anr. vs. Kerala State Electricity Board & Anr.*** ( (1997) 9 SCC 330).

***(7) Shaji Kuriakose and anr. vs. Indian Oil Corpn. Ltd., and ors.*** ((2001) 7 SCC 650);

(8) The ***Special Land Acquisition Officer(4), B.SD. vs. M/s. Western India Match Co. Ltd., and ors.*** ( (2002) (1) ALL Mr 115);

(9) ***Ravinder Narain and anr. vs. Union of India,*** ((2003) 4 SCC 481);

6. Per contra, Mr. Usgaonkar, learned Counsel appearing for the respondent has submitted that no fault could be found with the approach of the reference Court in fixing the market rate. It is further submitted that the land sold by Sale Deed dated 5.12.1995 is comparable to the acquired land and, therefore, the reference Court was fully justified in relying upon the said sale deed to fix the market rate of the acquired land. It is also submitted that although the sale deed relied upon by the reference Court is post-Section 4 Notification, the same is proximate in time and therefore, having regard to the ratio laid down by the Apex Court in several Judgments that the sale deeds proximate in time have to be relied upon for fixing the market rate of the acquired lands, the reliance placed on the sale deeds by the reference Court

cannot be faulted. In support of his submissions, the learned Counsel relied upon the following authorities :

***(1) Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona and anr. (***1988 (5) SCC 751);

(2) ***Mehta Ravindrarai Ajitrai (deceased) through his heirs and LRs. and orvs. vs. State of Gujarat, (***1989 (4) SCC 250)

***(3) Land Acquisition Officer Revenue Divisional Officer, Chittor vs. L. Kamalamma (Smt.) Dead by LRs. and ors. K. Krishnamachari and ors. (***1998 (2) SCC 385);

(4) ***Bhagwathula Samanna & Ors. vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, Visakhapatnam, (*** JT 1991 (4) SC 56);

(5) ***Ravinder Narain and anr. vs. Union of India (***2003 (4) SCC 481)

7. We have considered the submissions made by the learned Counsel for the parties. We have gone through the authorities relied upon by the respective parties and we have also gone through the records.

8. From the evidence which is brought on record, the following facts are clearly established:

The acquired land is bharad/rocky type and there is no direct transport available upto the acquired land; the acquired land is about 200 metres from Tivim Railway Station and Tivim Railway Station is about 300 metres away from Mapusa- Bicholim road; there are some houses existing at a distance of about 200- 300 metres away from the acquired land, both on the northern and southern side of the acquired land, which are having electricity and water connections; a primary school is at distance of about 700 metres and a secondary school is at a distance of about 2 ½ Kms. away from the acquired land; the closest market is at Assonora, which is about 4 ½ Kms. away from the acquired land; there is a petrol pump at a distance of about 1 km. and Mapusa and Bicholim are at a distance of about 9 and 8 kms. respectively from the acquired land and there is a flour mill and three liquor shops at a distance of about 300 kms. from the acquired land. From the evidence Stephen D'Souzawhich is brought on record, it is established that the acquired land was not developed at the time of acquisition. Public transport was also not available up to the acquired land, but the road from Mapusa to Bicholim, is at a distance of about 500 metres from the acquired land and there is no direct access from the acquired land to the said road. The road leading to Pirna is at a distance of about 40 metres from the acquired land.

9. The respondent has relied upon two sale deeds, one dated 27.1.1992 and the other one dated 5.12.1995. In so far as sale deed dated 27.1.1992 is concerned, the same can, obviously, be not relied upon for determining the market rate of the acquired land, since the sale deed is a composite one, which is in respect of the land as well as the house exiting therein and, therefore, it is not possible to find out what was the value of the land in the year 1992. In so far as the sale deed dated 5.12.1995 is concerned, there is no cogent evidence led by the respondent herein to prove that the land sold by the said deed is similar, in all respects, to the land acquired. However, it is established that the land sold by the sale deed, was a developed plot; whereas the acquired land is rocky and has partly undulating surface. The sale deed land was abutting the Mapusa-Bicholim road, while the acquired land is in the interior, at a distance of about 500 metres from the plot which is sold by the sale deed. The acquired land is quite large, as compared to the plot in the said sale deed. Therefore, considering all these factors, it would be necessary for us to fix the market rate of the acquired land. The sale deed dated 5.12.1995 is post-Section 4 Notification and price of the land sold by the said sale deed comes to Rs.337/- per sq. metre. Since the sale deed is post-Section 4 Notification, it would be proper to deduct 20 % from the consideration mentioned in the said sale deed, since the possibility of the people in the locality coming to know in advance about the proposed acquisition, cannot be ruled out. After considering the said

deduction, the value of the acquired land, as on the date of publication of Section 4 Notification, comes to Rs.269.60 which is rounded up to Rs.270/- . Since the acquired land is a large chunk of land, in view of the several decisions of the Apex Court, further deduction has to be made. Having regard to the nature of the acquired land, an appropriate deduction in the present case would be 45 %. Since the acquired land is situated in interior, away from Mapusa- Bicholim road, as compared to the plot sold by the said sale deed, further deduction of 20 % would be appropriate. Another factor which has to be considered is that there was not much development in the area in which the acquired land was situated and, as such, it would have taken some time for the respondent to develop the acquired land and on that count also further deduction of 15 % would be appropriate. Considering all these deductions, the value of the acquired land, as on the date of publication of Section 4 Notification comes to Rs. 54/- per sq. metre. According to us, the same would be the market rate of the acquired land, as on the date of Section 4 Notification. We are, therefore, unable to accept the approach of the reference Court in fixing the market rate at the rate of Rs.110/- per sq. metre, after making deductions which the reference Court thought was proper in the facts and circumstances of the case.

9. In view of the above discussion, we fix the market rate of the acquired land at Rs.54/- per sq. metre as on the date of publication of

Section 4 Notification. Needless to mention that the respondent will be also entitled to all the statutory benefits under the Act.

10. In the result, therefore, the appeal is partly allowed. The impugned Judgment and Award, passed by the reference Court fixing the market rate of the acquired land at the rate of Rs.,110/- per sq. metre, is modified to the extent indicated above. Having regard to the facts and circumstances of the case, the parties to bear their own costs.

A.P. LAVANDE, J.

N.A. BRITTO, J.

ssm.